

Exhibit E

From: Farrell, Gregory <gregory.farrell@hugheshubbard.com>
Sent: Thursday, April 22, 2021 12:25 PM
To: Nicholas Bahnsen; Pilcer, Julia C; Weinstein, Marc A.; Schoenfeld, Alan E
Cc: Sharon McCarthy; Caroline Ciraolo; Zhanna Ziering; Aaron Esman; Dulberg, Andrew S.; Oxford, Neil; Bongiorno, Michael
Subject: RE: SKAT's Responses to Interrogatories

EXTERNAL SENDER

Nick,

Defendants' contention interrogatories, re-served on March 18, still are premature. Local Rule 33.3(c) explicitly provides that contention interrogatories may be served "[a]t the conclusion of other discovery, and at least 30 days prior to the discovery cut-off." Local Rule 33.3(c) (emphasis added). In keeping with its plain language, "Southern District courts have been generally consistent that the proper understanding of Rule 33 requires contention interrogatories be reserved until after the completion of discovery." *In re Facebook, Inc., IPO*, MDL No. 12-2389, 2016 WL 5080152, at *3 (S.D.N.Y. Jul 7, 2016); *see also id.* ("There is no genuine dispute that, absent exceptional circumstances, Rule 33 firmly reserves service of contention interrogatories until 30 days before the completion of discovery."). Defendants' argument in Alan's March 18 letter that "[p]recisely the opposite is true" and that "it makes no difference that Defendants served their interrogatories more than 30 days before the agreed-to close of discovery" ignores the plain language of the Rule. (Mar. 18 Ltr. 1-2.)

Indeed, in granting in part SKAT's motion for a protective order, the Court explained that Local Rule 33.3(c) "recognizes that parties frequently are not in a position to give full statements of their contentions or the facts upon which they rely to support them until discovery is complete." (ECF No. 572.) The Rule "is intended to preclude expensive jousting" of the sort in which defendants seem determined to engage "over what, prior to the close of other discovery, often can be little more than a party's preliminary view of its position." *Id.* The Court thus struck those of defendants' Rule 30(b)(6) topics that sought the factual basis for SKAT's contentions "without prejudice to" defendants "exploring these questions by interrogatory at an appropriate time." *Id.* (emphasis added).

SKAT appreciates that defendants have attempted to serve their contention interrogatories twice already, so there is no need for a third try. As Rule 33.3(c) "anticipates" will occur "in the normal course," SKAT will answer defendants' contention interrogatories "at the very end of the fact discovery period," *i.e.*, on or shortly before June 30, 2021. *Erchonia Corp. v. Bissoon*, No. 07 Civ. 8696 (DLC), 2011 WL 3904600, at *8 (S.D.N.Y. Aug. 26, 2011).

Best,
Greg

Gregory Farrell | Associate

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From: Nicholas Bahnsen <nbahnsen@kflaw.com>

Sent: Wednesday, April 21, 2021 12:06 PM

To: Pilcer, Julia C <Julia.Pilcer@wilmerhale.com>; Weinstein, Marc A. <marc.weinstein@hugheshubbard.com>;

Schoenfeld, Alan E <Alan.Schoenfeld@wilmerhale.com>

Cc: Sharon McCarthy <smccarthy@kflaw.com>; Caroline Ciraolo <cciraolo@kflaw.com>; Zhanna Ziering <zziering@capdale.com>; Aaron Esman <mallison@capdale.com>; Dulberg, Andrew S.

<Andrew.Dulberg@wilmerhale.com>; Oxford, Neil <neil.oxford@hugheshubbard.com>; Farrell, Gregory

<gregory.farrell@hugheshubbard.com>; michael.bongiorno@wilmerhale.com

Subject: RE: SKAT's Responses to Interrogatories

CAUTION: This email was sent by someone outside of the Firm.

Dear Marc:

Defendants re-served interrogatories on March 18, 2021. Your client's responses were due on April 19, 2021. We have not received responses or a request for any extension of the time to respond. Please provide us with an update today on when we can expect to receive responses.

Best,

Nick

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From: Pilcer, Julia C <Julia.Pilcer@wilmerhale.com>

Sent: Thursday, March 18, 2021 4:42 PM

To: Weinstein, Marc A. <marc.weinstein@hugheshubbard.com>; Schoenfeld, Alan E

<Alan.Schoenfeld@wilmerhale.com>

Cc: Sharon McCarthy <smccarthy@kflaw.com>; Caroline Ciraolo <cciraolo@kflaw.com>; Nicholas Bahnsen <nbahnsen@kflaw.com>; Zhanna Ziering <zziering@capdale.com>; Aaron Esman <mallison@capdale.com>; Dulberg, Andrew S. <Andrew.Dulberg@wilmerhale.com>; Oxford, Neil <neil.oxford@hugheshubbard.com>; Farrell, Gregory <gregory.farrell@hugheshubbard.com>

Subject: RE: SKAT's objections to Rule 30(b)(6) notice

Marc,

Please see the attached correspondence and interrogatories.

Best,

Julia

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From: Weinstein, Marc A. <marc.weinstein@hugheshubbard.com>

Sent: Friday, March 12, 2021 12:43 PM

To: Schoenfeld, Alan E <Alan.Schoenfeld@wilmerhale.com>

Cc: Sharon McCarthy <smccarthy@kflaw.com>; Caroline Ciraolo <cciraolo@kflaw.com>; Nicholas Bahnsen <nbahnsen@kflaw.com>; Zhanna Ziering <zziering@capdale.com>; Aaron Esman <mallison@capdale.com>; Dulberg, Andrew S. <Andrew.Dulberg@wilmerhale.com>; Pilcer, Julia C <Julia.Pilcer@wilmerhale.com>; Oxford, Neil <neil.oxford@hugheshubbard.com>; Farrell, Gregory <gregory.farrell@hugheshubbard.com>

Subject: SKAT's objections to Rule 30(b)(6) notice

EXTERNAL SENDER

Alan:

Please see the attached letter concerning SKAT's objections to the defendants' Rule 30(b)(6) notice.

Regards,
Marc

Marc A. Weinstein | Partner

Chair, White Collar Defense

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